

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GLENNA BRYAN,

Plaintiff,

v.

Case No.: 2:07-cv-11955

Hon. George Steeh

HYATT CORPORATION, a Delaware Corporation  
d/b/a MANCHESTER GRAND HYATT, and JANE  
DOE (Hyatt Spa Masseur), jointly and severally,

Defendants.

\_\_\_\_\_  
PHILLIP S. SERAFINI (P45085)  
Serafini Michalowski, Derkacz &  
Associates, P.C.  
Attorney for Plaintiff  
38600 Van Dyke Avenue, Ste. 250  
Sterling Heights, MI 48312  
(586) 264-3756

RICHARD J. JOSLIN, JR. P475510  
THERESA M. ASOKLIS P42709  
Collins, Einhorn, Farrell & Ulanoff, P.C.  
Attorneys for Defendant Hyatt Corporation  
4000 Town Center #909  
Southfield, MI 48075  
248-355-4141

SUBSTITUTION OF ATTORNEYS

TO: Clerk of the Court

PLEASE TAKE NOTICE that the law firm of COLLINS, EINHORN, FARRELL & ULANOFF, P.C., has this day been substituted in the above-captioned cause in the place and stead of the law firm of GARAN LUCOW MILLER, P.C., attorneys JUDITH A. MOSKUS (P32072) and RENEE BIRNBAUM (P50092), as attorney for Defendants Hyatt Corporation d/b/a Manchester Grand Hyatt San Diego in the above cause.

COLLINS, EINHORN, FARRELL & ULANOFF, P.C.

BY: /s/ Richard A. Joslin, Jr. (P47510)  
RICHARD A. JOSLIN, JR. (P47510)  
THERESA M. ASOKLIS (P42709)  
Attorneys for Defendants  
4000 Town Center #909  
Southfield, MI 48075  
248-355-4141  
[Richard.Joslin@ceflawyers.com](mailto:Richard.Joslin@ceflawyers.com)

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GLENNA BRYAN,

Plaintiff,

v.

Case No.: 2:07-cv-11955

Hon. George Steeh

HYATT CORPORATION, a Delaware Corporation  
d/b/a MANCHESTER GRAND HYATT, and JANE  
DOE (Hyatt Spa Masseuse), jointly and severally,

Defendants.

\_\_\_\_\_  
PHILLIP S. SERAFINI (P45085)  
Serafini Michalowski, Derkacz &  
Associates, P.C.  
Attorney for Plaintiff  
38600 Van Dyke Avenue, Ste. 250  
Sterling Heights, MI 48312  
(586) 264-3756  
\_\_\_\_\_

RICHARD J. JOSLIN, JR. P475510  
THERESA M. ASOKLIS P42709  
Collins, Einhorn, Farrell & Ulanoff, P.C.  
Attorneys for Defendant Hyatt Corporation  
4000 Town Center #909  
Southfield, MI 48075  
248-355-4141

CONSENT

TO: Clerk of the Court

I hereby consent that COLLINS, EINHORN, FARRELL & ULANOFF, P.C., be  
substituted in my place and stead as attorneys for Defendants, Hyatt Corporation, d/b/a  
Manchester Grand Hyatt San Diego, in the above cause.

GARAN LUCOW MILLER, P.C.

By: /s/ Renee Birnbaum (P50092)  
JUDITH A. MOSKUS (P32072)  
RENEE BIRNBAUM (P50092)  
101 North Main Street, Ste. 460  
Ann Arbor, Michigan 48104-5507  
(734) 930-5600  
RBirnbaum@garanlucow.com

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GLENNA BRYAN,

Plaintiff,

v.

Case No.: 2:07-CV-11955

Hon. George Steeh

HYATT CORPORATION, a Delaware Corporation  
d/b/a MANCHESTER GRAND HYATT, and JANE  
DOE (Hyatt Spa Masseur), jointly and severally,

Defendants.

\_\_\_\_\_  
/ PHILLIP S. SERAFINI (P45085)  
Serafini Michalowski, Derkacz &  
Associates, P.C.  
Attorney for Plaintiff  
38600 Van Dyke Avenue, Ste. 250  
Sterling Heights, MI 48312  
(586) 264-3756  
\_\_\_\_\_

RICHARD J. JOSLIN, JR. P475510  
THERESA M. ASOKLIS P42709  
Collins, Einhorn, Farrell & Ulanoff, P.C.  
Attorneys for Defendant Hyatt Corporation  
4000 Town Center #909  
Southfield, MI 48075  
248-355-4141

**ORDER PERMITTING SUBSTITUTION**

In accordance with the foregoing written substitution of attorneys;

IT IS HEREBY ORDERED that COLLINS, EINHORN, FARRELL & ULANOFF,  
P.C., may be and hereby is substituted as counsel representing Defendant Hyatt Corporation,  
d/b/a Manchester Grand Hyatt San Diego in the above cause.

Dated: 11/16/07

S/George Caram Steeh  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GLENN A BRYAN,

Plaintiff,

V

Case No. 2:07-CV-11955

Hon. George Steeh

HYATT CORPORATION, a Delaware  
Corporation d/b/a MANCHESTER GRAND  
HYATT, and JANE DOE (Hyatt Spa Masseur),  
Jointly and Severally,

Defendants

\_\_\_\_\_  
/

PHILLIP S. SERAFINI (P45085)  
Attorney for Plaintiff  
38600 Van Dyke Avenue #250  
Sterling Heights, MI 48312  
586-264-3756  
586-264-3783 Fax  
[psslaw@msn.com](mailto:psslaw@msn.com)

RICHARD A. JOSLIN (P47510)  
Attorney for Defendant  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

\_\_\_\_\_  
/

**DEFENDANT HYATT CORPORATION'S**  
**MOTION TO DISMISS UNDER 28 USC 1406(a), OR IN**  
**THE ALTERNATIVE, TO TRANSFER VENUE UNDER §1406(a) or §1404 (a)**

NOW COMES Defendant Hyatt Corporation and moves this Honorable Court for an Order dismissing Plaintiff's Complaint or transferring this action to the Southern District of California. In support of this motion, Defendant relies on the attached Brief in Support.

COLLINS, EINHORN, FARRELL & ULANOFF, P.C.

BY /s/Richard A. Joslin, Jr.

RICHARD A. JOSLIN (P47510)  
Attorney for Defendant  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
[Richard.joslin@ceflawyers.com](mailto:Richard.joslin@ceflawyers.com)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GLENNA BRYAN,

Plaintiff,

vs

Case No. 2:07-CV-11955

Hon. George Steeh

HYATT CORPORATION, a Delaware  
Corporation d/b/a MANCHESTER GRAND  
HYATT, and JANE DOE (Hyatt Spa Masseuse),  
Jointly and Severally,

Defendants.

\_\_\_\_\_  
PHILLIP S. SERAFINI (P45085)

Attorney for Plaintiff

38600 Van Dyke Avenue #250

Sterling Heights, MI 48312

586-264-3756

586-264-3783 Fax

[psslaw@msn.com](mailto:psslaw@msn.com)  
\_\_\_\_\_

RICHARD A. JOSLIN (P47510)

Attorney for Defendants

4000 Town Center, Suite 909

Southfield, MI 48075

(248) 355-4141

[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

**BRIEF IN SUPPORT OF DEFENDANT HYATT CORPORATION'S  
MOTION TO DIMISS UNDER 28 USC 1406(a), OR IN THE ALTERNATIVE, TO  
TRANSFER VENUE UNDER § 1406(a) OR § 1404(a)**

### STATEMENT OF ISSUE PRESENTED

This motion presents this Court with the following issue:

Plaintiff, a Michigan resident, filed this action against Defendant Hyatt Corporation, a Delaware corporation and Defendant Jane Doe, an unidentified masseuse residing in California for injuries allegedly sustained by the Plaintiff while receiving a massage at a Hyatt Hotel in San Diego, California. Venue in diversity actions is determined 28 USC §1391. Under §1391, venue is not proper in the United States Court for the Eastern District of Michigan because both Hyatt and Jane Doe are residents of the same district and the events that gave rise to this action occurred in California.

28 USC 1406(a) provides that a court *shall* dismiss a case if filed in the wrong venue or, if in the interest of justice, transfer it to any district of division in which it might have been brought. Furthermore, in the alternative, 28 U.S.C. §1404(a) provides that a district court may transfer venue to any other district where the action might have been brought for the convenience of parties and witnesses. As such, this Honorable Court is moved to either dismiss this action or transfer it to the Southern District of California.

## STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITY

### *Cases*

<i>Audi AG v D'Amato</i> , 341 F. Supp. 2d 734 (2004).....	6
<i>First of Michigan Corp. v. Bramlet</i> , 141 F.3d 260 (6th Cir. 1998).....	5
<i>Grand Kensington, L.L.C. v. Burger King Corp.</i> , 81 F. Supp. 2d 834 (E.D. Mich. 2000) .....	6
<i>Helder v. Hitachi Power Tools, USA LTD.</i> , 764 F. Supp. 93 (E.D.Mich. 1991) .....	7
<i>McNic Oil &amp; Gas Co. v. IBEX Resources Co., L.L.C.</i> , 23 F. Supp. 2d 729, 739 (E.D. Mich. 1998).....	6
<i>Niemi v. NHK Spring Co.</i> , 2006 U.S. Dist. Lexis 24506 (E. D. Mich. 2006).....	5
<i>Overland, Inc. v. Taylor</i> , 79 F. Supp. 2d 809 (E. D. Mich. 2000) .....	7
<i>Rowe v. Chrysler Corp.</i> , 520 F. Supp. 15 (E.D. Mich. 1981) .....	7
<i>Skee-Ball, Inc. v. Lazer-Tron, Inc.</i> , 1996 U.S. Dist. Lexis 17588 (W. D. Mich. 1996).....	5
<i>Stewart Organization, Inc. v. Ricoh Corp.</i> , 108 S. Ct. 2239; 101 L. Ed. 2d 22 (1988) .....	6
<i>Thomas v. Home Depot U.S.A., Inc.</i> , 131 F. Supp. 2d 934 (E.D. Mich. 2001).....	7

***Statutes***

28 U.S.C. § 1391(a).....	1, 3, 4, 5,
28 USC 1404(a).....	6,7
28 USC 1406(a).....	1, 5



**BRIEF IN SUPPORT OF DEFENDANT HYATT CORPORATION'S MOTION TO  
DIMISS FOR LACK OF VENUE PURSUANT TO 28 USC 1406(a), OR IN THE  
ALTERNATIVE, TO TRANSFER VENUE PURSUANT § 1406(a) OR § 1404(a)**

**INTRODUCTION**

This case arises out of events that allegedly took place while Plaintiff was a guest at the Manchester Grand Hyatt hotel in San Diego, California. Because venue is not proper in the Eastern District of Michigan and the action should have been brought in the Southern District of California, dismissal or transfer of this action is appropriate under 28 USC §1404(a) and/or 28 USC §1406(a).

**STATEMENT OF PERTINENT FACTS**

Plaintiff Glenna Bryan, a resident of Michigan, was a guest at the Defendant Manchester Grand Hyatt hotel in San Diego in May of 2006. The Hyatt is a Delaware corporation with its principal place of business in Illinois. (Complaint, ¶¶ 1 & 2). On May 9, 2006 Plaintiff signed up for a deep tissue massage at the hotel. (Complaint, ¶ 6). The masseuse, whom Plaintiff refers to as Jane Doe, allegedly injured Plaintiff "by exerting excessive and unnecessary force in the course of performing the massage...." (*Id.*, ¶ 11). Plaintiff alleges that the Jane Doe defendant is a resident of California. (*Id.* at ¶ 4). Plaintiff filed her complaint in this Court on May 15, 2007 alleging two unnumbered counts that seem to be asserting negligence against Defendant Jane Doe and vicarious liability against Defendant Hyatt Corporation. Plaintiff bases the jurisdiction of this court on the federal court's diversity jurisdiction pursuant to 28 USC §1332. (*Id.* at ¶ 5).

## ARGUMENT

- A. Venue in diversity actions is determined by 28 USC §1391(a). Venue in the Eastern District of Michigan is not proper because both the Hyatt defendant and the Jane Doe defendant reside in the same California district for purposes of determining venue and also because the events which gave rise to this claim occurred in California. Therefore, dismissal or transfer is appropriate under § 1406(a).*

This case is in federal court based on diversity jurisdiction. 28 U.S.C. § 1391(a)

instructs as to the proper venue in diversity cases:

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought. (emphasis added).

The Eastern District of Michigan is not a proper venue under this statute. Plaintiff has alleged that Defendant Jane Doe is a resident of California. (Complaint, ¶ 4). Hyatt Corporation would be a “resident” of California for purposes of venue because §1391(c) declares that for “purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.” Thus, venue **is proper** in the Southern District of California pursuant to §1391(a)(1) because, taking the plaintiffs allegations in her complaint as true, both defendants reside there.

Even if we put aside the residence of the Jane Doe defendant, venue is still improper in the Eastern District of Michigan. Assuming *arguendo* that not all of the defendants reside in the same district, then the next level of inquiry in determining venue is the location where “a

substantial part of the events or omissions giving rise to the claim occurred . . .” Here, it is undisputed that the events which gave rise to Ms. Bryant’s claim occurred at the Manchester Grand Hyatt located in San Diego, California. *See, Plaintiff’s Complaint*, ¶¶ 3, 4, 6, 7, 89, 10 and 11.

Subsection (3) of §1391 is not implicated in this discussion because under its clear and unambiguous language, it is a residual venue provision which is only invoked in the rare cases in which subsections (1) and (2) do not apply.

Venue is not proper in the Eastern District of Michigan. As such, this Honorable Court must now decide whether to transfer or dismiss the action.

**B. 28 USC 1406(a) and 1404(a)**

28 USC 1406(a) provides that a court *shall* dismiss a case if filed in the wrong venue *or* transfer it to a proper district if required under the interests of justice:

the district court of a district in which is filed a case laying in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district of division in which it could have been brought.

Section 1406(a) "allows a district court to grant a change of venue when venue was improper in the original forum. *Niemi v. NHK Spring Co.*, 2006 U.S. Dist. Lexis 24506 (E. D. Mich. 2006). It “provides a basis for any transfer made for the purpose of avoiding an obstacle to adjudication on the merits in the district court where the action was originally brought.” *Skee-Ball, Inc. v. Lazer-Tron, Inc.*, 1996 U.S. Dist. Lexis 17588 (W. D. Mich. 1996). The decision of whether to dismiss or transfer an action pursuant to 28 U.S.C. § 1406(a) is within the district court’s sound discretion. *First of Michigan Corp. v. Bramlet*, 141 F.3d 260, 262 (6th Cir. 1998).

Given that none of the lawyers involved in this case are, upon information and belief, admitted to the bar in California or the federal courts there and because the plaintiff's claim would not otherwise be barred, this court is urged to exercise its discretion and dismiss the case so as to allow all parties a "fresh start" in California.

***C. In the alternative, even if this Court were to find venue to be technically proper in the Eastern District of Michigan, this Court is urged to use its discretion and transfer venue to the Southern District of California for the convenience of the parties.***

28 U.S.C. §1404(a) provides that a district court *may* transfer venue to another district court for the convenience of parties and witnesses:

For the convenience of parties and witnesses, in the interest of justice, a district court *may* transfer any civil action to any other district or division where it might have been brought. [emphasis supplied].

Section 1404(a) is intended to give discretion to federal trial courts to adjudicate motions for transfer according to individualized, case-by-case consideration of convenience and fairness. *Stewart Organization, Inc. v. Ricoh Corp.*, 108 S. Ct. 2239; 101 L. Ed. 2d 22 (1988). The district courts have wide discretion "in order to prevent waste of time, energy and money, and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Grand Kensington, L.L.C. v. Burger King Corp.*, 81 F. Supp. 2d 834, 836 (E.D. Mich. 2000).

A transfer may be granted "[f]or the convenience of parties and witnesses [and] in the interest of justice." *Id.* In ruling on a transfer of venue motion under § 1404(a), the Court must determine whether (1) the action could have been brought in the proposed transferee-court, (2) a transfer would promote the interests of justice, and (3) a transfer would serve the parties' and the witnesses' convenience. *Audi AG v D'Amato*, 341 F. Supp. 2d 734, 749 (2004) (citation and quotation omitted)

When considering a motion to transfer venue pursuant to 28 U.S.C. § 1404(a), the first prong to be considered by the court is whether venue is appropriate in the court where the action is sought to be transferred. *McNic Oil & Gas Co. v. IBEX Resources Co., L.L.C.*, 23 F. Supp. 2d 729, 739 (E.D. Mich. 1998). If answered in the affirmative, the court will then examine several factors when evaluating the interests of justice and convenience: (1) the convenience of witnesses; (2) the location of relevant documents and relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of the operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded the plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances. *Overland, Inc. v. Taylor*, 79 F. Supp. 2d 809, 811 (E. D. Mich. 2000). In short, a court may consider any factor that may make any eventual trial easy, expeditious, and inexpensive. *Helder v. Hitachi Power Tools, USA LTD.*, 764 F. Supp. 93, 96 (E.D.Mich. 1991). The moving party bears the burden of demonstrating that, in light of these factors, "fairness and practicality strongly favor the forum to which transfer is sought." *Thomas v. Home Depot U.S.A., Inc.*, 131 F. Supp. 2d 934, 936 (E.D. Mich. 2001) (quoting *Rowe v. Chrysler Corp.*, 520 F. Supp. 15, 16 (E.D. Mich. 1981)).

Here, assuming *arguendo* that venue is proper in Michigan, the criteria set forth in *Overland, supra*, would weigh in favor of transfer for the convenience of the parties. The masseuse whom Hyatt is alleged vicariously liable for is located in California. The hotel and its records are located in California. Other potential witnesses such as hotel personnel who had dealings with the Plaintiff after her massage are located in California. None of these witnesses, including the masseuse, would be subject to process in Michigan. Furthermore, most likely, California law will be applied to this claim.

Therefore, even if venue in this Court were proper pursuant to § 1404(a) this matter should be transferred to the Southern District of California for the convenience of the parties and in the interests of justice.

### CONCLUSION

Defendant Hyatt Corporation moves this Court to grant its motion and either dismiss Plaintiff's complaint or transfer this action to the Southern District of California.

COLLINS, EINHORN, FARRELL & ULANOFF, P.C.

BY: /s/Richard A. Joslin, Jr.  
RICHARD A. JOSLIN (P47510)  
Attorney for Defendants  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

Dated: November 21, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2007, my secretary, Tammie DeJaeghere, electronically filed Defendant Hyatt Corporation Motion to Dismiss or to Transfer Venue and Brief in Support with the Clerk of the Court using the ECF system.

/S/ RICHARD A. JOSLIN, JR.

RICHARD A. JOSLIN, JR. (P55258)

Attys for Defendant Hyatt Corp.

4000 Town Center, Suite 909

Southfield, MI 48075

(248) 355-4141

[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

Dated: November 21, 2007

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

GLENN A BRYAN

Plaintiff,

C/A 2:07-cv-11955  
HON: George Steeh

vs

HYATT CORPORATION, a Delaware Corporation  
d/b/a MANCHESTER GRAND HYATT,  
and Jane Doe (Hyatt Spa Masseuse),  
jointly and severally,

Defendants

---

**SERAFINI, MICHALOWSKI, DERKACZ & ASSOCIATES, PC**  
PHILLIP S. SERAFINI (P45085)  
Attorneys for Plaintiffs,  
38600 Van Dyke Avenue., Suite 250  
Sterling Heights, MI 48312  
(586) 264-3756

**GARAN LUCOW MILLER, P.C.**  
JUDITH A. MOSKUS (P32072)  
RENEE BIRNBAUM (P50092)  
Attorneys for Defendant, Hyatt Corporation  
d/b/a Manchester Grand Hyatt San Diego  
101 North Main Street, Suite 460  
Ann Arbor, MI 48104-5507  
(734) 930-5600

---

**PLAINTIFF'S WITNESS LIST**

NOW COMES the Plaintiff, Glenna Bryan, by and through her attorney, PHILLIP SERAFINI, and for her list of witnesses that may be called at the time of trial states:

1. Glenna Bryan.
2. Harold Telefsen.
3. Archie Mojares.
4. Austin Bryan.



5. Alison Spadafore.
6. Chris Hett.
7. Colin Bryan.
8. Helen Fawkes.
9. Keith Carson.
10. Any and all agents, employees, representatives and/or record custodians of Hyatt Corporation d/b/a Manchester Grand Hyatt San Diego, including but not limited to Jennifer Turner, Ariel Moreno, Ms. Novack, Adam Nemirow, Matt Lee, and April Nakamura.
11. Any and all agents, employees, representatives and/or record custodians of American Massage Therapy Corp., including but not limited to April Nakamura.
12. Custodian of the Records, employees, agents, representatives and medical care providers of Chiropractic Works, PC, including, but not limited to: Dr. Duncan Mukeku & Dr. Ray Hillenbrand.
13. Custodian of the Records, employees, agents, representatives and medical care providers associated with Dr. Ramesh Chheda, including but not limited to Dr. Chheda.
14. Custodian of the Records, employees, agents, representatives and medical care providers of the Center for the Healing Arts, including, but not limited to: Ian Evans.
15. Custodian of the Records, employees, agents, representatives and medical care providers of Citizens Medical Group, including, but not limited to: G. Vantassell MD, Kenneth L. Sisco, MD, PhD, and Paul T. Wertlake, MD.

16. Custodian of the Records, employees, agents, representatives and medical care providers associated with Darla Paoletti, including but not limited to Darla Paoletti and Lee Anne.
17. Any necessary rebuttal witnesses.
18. Any witnesses disclosed through continuing discovery, including any other physician who treated or provided care to Glenna Bryan.
19. Any witness listed in Defendant=s Answers to Plaintiff=s Interrogatories and Request for Production of Documents.
20. Any and all witnesses who become known through further deposition testimony.
21. Any and all medical doctors or physical therapists may be called upon to give expert testimony in their field of expertise.

Plaintiff reserves the right to amend her witness list as necessary.

Respectfully Submitted,

**SERAFINI, MICHALOWSKI, DERKACZ &  
ASSOCIATES, PC**

BY: \_\_\_\_\_/S/  
PHILLIP SERAFINI (P45085)  
Attorneys for Plaintiff  
38600 Van Dyke Ave., Suite 250  
Sterling Heights, Michigan 48312  
(586) 264-3756

Dated: November 21, 2007

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

Glenna Bryan,

Plaintiff(s),

v.

Case No. 2:07-cv-11955-GCS-VMM  
Hon. George Caram Steeh

Hyatt Corporation, et al.,

Defendant(s).

---

**NOTICE OF MOTION HEARING**

You are hereby notified to appear before the Honorable George Caram Steeh at the United States District Court, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan. The following motion(s) are scheduled for hearing:

Motion to Dismiss – #18

- RESPONSE DUE: 12/17/2007
- REPLY DUE: 01/02/2008
- MOTION HEARING: 1/23/08 at 02:00 PM

**Certificate of Service**

I hereby certify that this Notice was electronically filed, and the parties and/or counsel of record were served.

By: s/ M. Beauchemin  
Case Manager

Dated: November 28, 2007

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

GLENN A BRYAN

Plaintiff,

C/A 2:07-cv-11955-GCS-VMM  
HON: George Steeh

vs

HYATT CORPORATION, a Delaware Corporation  
d/b/a MANCHESTER GRAND HYATT,  
and Jane Doe (Hyatt Spa Masseur),  
jointly and severally,

Defendants

---

SERAFINI, MICHALOWSKI,  
DERKACZ & ASSOCIATES, PC  
PHILLIP S. SERAFINI (P45085)  
Attorneys for Plaintiffs,  
38600 Van Dyke Avenue., Suite 250  
Sterling Heights, MI 48312  
(586) 264-3756  
psslaw@msn.com

---

RICHARD A. JOSLIN (P47510)  
Attorney for Defendant, Hyatt  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
richard.joslin@ceflawyers.com

---

**BRIEF IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANT HYATT  
CORPORATION'S MOTION TO DISMISS UNDER 28 USC 1406(a), OR IN THE  
ALTERNATIVE, TO TRANSFER VENUE UNDER 1406(A) OR 1404 (a)**

**INTRODUCTION**

Venue is proper in this Court because the only remaining Defendant-Hyatt Corporation is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced pursuant to 28 USC 1391( c).

**STATEMENT OF FACTS**

Glenna Bryan filed this matter on May 3, 2007 when she was injured as a guest of Defendant at the Manchester Grand Hyatt Hotel in San Diego. Suit was filed in this Honorable

Court on the basis of diversity as Hyatt Corporation is a Delaware corporation with its principal place of business in Illinois. Hyatt is subject to personal jurisdiction in the Michigan by virtue of its operation of the Hyatt Regency Dearborn . (Exhibit A- Documents filed by Hyatt with the Michigan Department of Labor)

After suit was filed, Defendant Hyatt was served with the summons and complaint and has appeared and defended this action. On the other hand, Plaintiff has been unable to identify or serve Jane Doe-the Hyatt Spa Masseuse. Accordingly, Jane Doe must be dismissed without prejudice as more than 120 days has elapsed since the summons was issued. Fed. Rule Civ. P. 4(m). Therefore, this Court should analyze whether venue is proper for the sole remaining Defendant-Hyatt Corporation.

**VENUE IS PROPER IN THIS COURT AS HYATT CORPORATION FOR  
PURPOSES OF VENUE IS DEEMED TO RESIDE IN MICHIGAN**

Subject matter jurisdiction is established based on complete diversity as Plaintiff is a resident of Michigan and Hyatt is a resident of Delaware and Illinois pursuant to 28 U.S.C. § 1332(c)(1).

Accordingly, Venue is proper pursuant to 28 U.S.C. § 1391(a) in a "judicial district where any defendant resides, if all defendants reside in the same State." In this matter, there is only a single Defendant-Hyatt Corporation. Accordingly, venue will properly lie where Defendant-Hyatt Corporation resides.

28 U.S.C. § 1391( c) provides that for "purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." Personal jurisdiction may be either "general" or "specific."*Bird v. Parsons*, 289 F.3d 865, 873 (6th Cir.2002). General jurisdiction

exists when a defendant's "contacts with the forum state are of such a continuous and systematic nature that the state may exercise personal jurisdiction over the defendant even if the action is unrelated to the defendant's contacts with the state." *Id.* (citing *Third Nat'l Bank in Nashville v. WEDGE Group, Inc.*, 882 F.2d 1087, 1089 (6th Cir.1989)) The "transaction of any business" required for limited personal jurisdiction is satisfied by "the slightest act of business in Michigan." *Lanier v. American Board of Endodontics*, 843 F.2d 901 (6th Cir. 1988) (citing *Sifers v. Horen*, 385 Mich. 195, 199 n. 2, 188 N.W.2d 623 (1971)).

Hyatt Corporation is subject to personal jurisdiction in this state by virtue of its continuous and systematic business operations. Specifically, Hyatt Corporation has been doing business under the assumed name Hyatt Regency Dearborn for years. Attached as exhibit A are documents filed by Hyatt Corporation with the Michigan Department of Labor and Economic Growth which conclusively establish the minimum contacts necessary to establish personal jurisdiction. Accordingly, Defendant's motion should be denied.

**VENUE IS PROPER IN THIS COURT BECAUSE A SUBSTANTIAL PART OF THE EVENTS OR OMISSIONS GIVING RISE TO THE CLAIM OCCURRED**

First and foremost, venue is proper under 28 USC § 1391(a) (1) as outlined above as Hyatt Corporation is deemed a resident of Michigan. However, venue is proper in this Court for the additional reason that a substantial portion of the events or omissions giving rise to this claim occurred in Michigan.

Venue is proper in any judicial district in which a "substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(a)(2). The Sixth Circuit has held that in diversity of citizenship actions, the "plaintiff may file his complaint in any forum where a substantial part of the events or omissions giving rise to the claim arose." *First of Michigan*

*Corp. v. Bramlet*, 141 F.3d 260, 263-264 (6th Cir.1998). This includes any forum with a substantial connection to the plaintiff's claim, and does not require the forum to have the most substantial connection.

The statute was amended in 1990 in order to broaden the venue provisions. The commentary following the 1990 revisions to § 1391(a)(2) states:

The fact that substantial activities took place in district B does not disqualify district A as proper venue as long as "substantial" activities took place in A, too. Indeed, district A should not be disqualified even if it is shown that the activities in district B were more substantial, or even the most substantial. Any other approach would restore the pinpointing problem that created the difficulties under the now discarded "claim arose" standard. If the selected district's contacts are "substantial," it should make no difference that another's are more so, or the most so.

David D. Siegel, Commentary on the 1988 and 1990 Revisions of Section 1391, Subdivision (a), Clause (2), 28 U.S.C.A. § 1391 (1993).

*First of Michigan Corp. v. Bramlet*, 141 F.3d 260, 263-264 (6th Cir.1998).

In the present case, substantial activities took place in Michigan. Specifically, Plaintiff has received medical care and treatment from various physicians for the serious physical injuries she sustained.

**THIS CONVENIENCE OF THE PARTIES AND FAIRNESS  
MANDATE THAT THIS CASE SHOULD NOT BE TRANSFERRED**

Defendant next argues that this matter should be transferred for the convenience of the parties. Defendant is wrong.

In *Overland v Taylor*, 79 F. Supp. 2d 809, 811 (E.D. Mich 2000) the court recognized the factors that guide a district court's discretion when deciding whether to transfer a case include:

(1) the convenience of witnesses; (2) the location of relevant documents and relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of the operative facts; (5) the availability of process to compel the attendance of unwilling

witnesses; (6) the relative means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded the plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

An examination of these factors demonstrates that this matter should not be transferred.

First, the majority of the witnesses are located in Michigan. Plaintiff, her multiple treating physicians, her employer, her other fact witnesses (including family members) are all located in Michigan. The singular witness located in California is the as yet unidentified non-party masseuse. Accordingly, the convenience of the overwhelming majority of the witnesses favors Michigan.

The relevant documents consist primarily of Plaintiff's medical records from her numerous treating physicians, each of which is located in Michigan. Accordingly, this factor likewise favors Michigan.

Plaintiff is an individual who lives in Michigan. Defendant is a national corporation with ongoing corporate activity in Michigan. It would certainly be a tremendously more inconvenient for Plaintiff to litigate this matter in California than for Hyatt to defend this matter in Michigan. The convenience of the parties certainly favors Michigan.

The locus of the operative facts is essentially equal. While there is no question the negligent act took place in California, all of Plaintiff's treatment has occurred in Michigan. This factor favors neither Michigan nor California.

The availability or process to compel the attendance of unwilling witnesses is the same in either venue. This factor favors neither Michigan nor California.

The relative means of the parties clearly favors Plaintiff. Hyatt Corporation is a national chain of hotels with substantial income and profit. Hyatt has already located and retained counsel to defend this matter. On the other hand, Plaintiff is an individual of limited means. She



does not have the ability to find or retain out of state counsel. Accordingly, this factor likewise favors Michigan.

The forum's familiarity with the governing law probably slightly favors California. This is a simple general negligence claim. As a general matter the difference between such claims based on Michigan law or California law is superficial.

The weight accorded the Plaintiff's choice of forum. This factor favors Michigan.

Finally, the trial efficiency and the interests of justice based on the totality of the circumstances. As previously stated the vast majority of witnesses are located in Michigan. Plaintiff's retained counsel practices in the State of Michigan. Should this matter be transferred, Plaintiff counsel will be forced to take steps to get admitted to practice in the federal court in California or Plaintiff will have to retain other counsel. Accordingly, this factor likewise favors Michigan.

Wherefore, Plaintiff, through her attorneys, respectfully requests that this court deny Defendant's request to dismiss or transfer this matter.

**SERAFINI, MICHALOWSKI, DERKACZ &  
ASSOCIATES, PC**

\_\_\_\_\_/s/\_\_\_\_\_  
PHILLIP S. SERAFINI (P45085)  
Attorney for Plaintiff  
38600 Van Dyke Avenue., Suite 250  
Sterling Heights, MI 48312  
(586) 264-3756

December 14, 2007

EXHIBIT A

Document List

New Search

Help Menu

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH  
 FOREIGN CORPORATION INFORMATION UPDATE

2006

Registration Number <b>612996</b>	Corporation Name <b>HYATT CORPORATION</b>	Filed By Department
Resident agent name and mailing address of the registered office <b>UNITED STATES CORPORATION COMPANY</b> <b>601 ABBOTT ROAD</b> <b>EAST LANSING MI 48023</b>		APR 26 2006 <b>RECEIVED</b> APR 26 2006 MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH BUREAU OF CORPORATE SERVICES
Principal office of the registered office <b>601 ABBOTT ROAD</b> <b>EAST LANSING MI 48023</b>		

☐ To certify there are no changes from your previous filing check this box and proceed to Item 7. If the resident agent neither principal office has changed complete Item 1-7. If no change in resident agent or registered office but other information has changed complete Items 1-7.

1. Mailing address of registered office in Michigan (may be a P.O. Box)	2. Resident Agent
3. The address of the registered office in Michigan (if P.O. Box may not be designated as the address of the registered office)	
4. Describe the general nature and kind of business in which the corporation is engaged <b>Manages and leases hotels</b>	
5. NAME BUSINESS OR RESIDENT ADDRESS	
President <b>Douglas G. Goaga</b>	<b>71 S. Wacker Drive, Chicago, IL 60606</b>
Secretary <b>Harold S. Handelsman</b>	<b>71 S. Wacker Drive, Chicago, IL 60606</b>
Treasurer <b>Kirk A. Rose</b>	<b>71 S. Wacker Drive, Chicago, IL 60606</b>
Other Officers <b>Michael Hodges</b>	<b>71 S. Wacker Drive, Chicago, IL 60606</b>
<b>Thomas J. Pritchett</b>	<b>71 S. Wacker Drive, Chicago, IL 60606</b>
<b>Douglas G. Goaga</b>	<b>71 S. Wacker Drive, Chicago, IL 60606</b>
<b>Harold S. Handelsman</b>	<b>71 S. Wacker Drive, Chicago, IL 60606</b>
6. Single filers must complete this section. Submit an amended application to report a change in included officers. For businesses in which the number of officers has increased to 15 or more, you may complete the resident worksheet and report any additional officers below. This report is filed as an amended application.	
Total authorized shares <b>500,000</b>	What percent of shares is for year ending <b>2006</b>
Preferred shares <b>2,000</b>	Preferred period <b>27000 to the year ending 2002</b>
7. Signature of registered officer or agent	Treasurer Date <b>4/15/06</b> Place (Printed)

This report must be filed on or before May 15, 2006.  
 Filing fee is \$25.00.  
 If Agency provides after September 30, 2006, total fee is \$75.  
 (\$25 filing fee, plus \$50 late penalty)  
 Please make your check or money order payable to the State of Michigan.  
 Return to:  
 Michigan Department of Labor & Economic Growth  
 Bureau of Corporate Services, Corporation Division  
 P.O. Box 30000  
 Lansing, MI 48900  
 (517) 245-5600  
 If corrections to included officers may be included. Do not change any items in report. This report is required by Section 211, Act 204, Public Act of 1976, as amended. Failure to file this report may result in the revocation of the corporation's Certificate of Authority. Late filing may result in penalties.

12860 194975 CC/SGL

Exh A

Document List

New Search

Help Menu

UCO00001.pdf

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH BUREAU OF COMMERCIAL SERVICES, CORPORATION DIVISION	
Corporation	(FOR BUREAU USE ONLY)
OCT 15 2007	<b>FILED</b>
	OCT 15 2007
	Administrator BUREAU OF COMMERCIAL SERVICES
	EXPIRATION DATE: DECEMBER 31, 2012

612896

State Election Number

**CERTIFICATE OF RENEWAL OF ASSUMED NAME**

For use by Corporations

(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations) or Act 462, Public Acts of 1962 (nonprofit corporations), the corporation in Item one executes the following Certificate:

1. The corporate name, resident agent, and mailing address of the registered office are:  HYATT CORPORATION  UNITED STATES CORPORATION COMPANY 601 ABBOTT ROAD EAST LANSING MI 48023
2. The assumed name under which business is transacted is:  HYATT REGENCY DEARBORN
3. The registration of the assumed name is extended for a period expiring on December 31 of the fifth full calendar year following the year in which this renewal is filed, unless sooner terminated.
4. The document is hereby signed as required by the Act.

Signed this 12th day of October, 2007

By Walter M. Kelly  
(Signature of an Authorized Officer or Agent)

Reid E. Hale, Assistant Secretary

(Type or Print Name)

110.00 4113 10244



[Michigan.gov Home](#)

[DLEG](#) | [Sitemap](#) | [Contact](#) | [Online Services](#) | [Agencies](#)



## CORPORATE ENTITY DETAILS

Searched for: HYATT REGENCY DEARBORN

ID Num: 612996

[Assumed Names](#)

Entity Name: HYATT CORPORATION

Type of Entity: Foreign Profit Corporation

Resident Agent: UNITED STATES CORPORATION COMPANY

Registered Office Address: 601 ABBOT ROAD EAST LANSING MI 48823

Mailing Address:

Formed Under Act Number(s):

Incorporation/Qualification Date: 8-6-1974

Jurisdiction of Origin: DELAWARE

Number of Shares: 100,000

Year of Most Recent Annual Report: 07

Year of Most Recent Annual Report With Officers & Directors: 07

Status: ACTIVE Date: Present

[View Document Images](#)

[Return to Search Results](#)

[New Search](#)

[Michigan.gov Home](#) | [DLEG](#) | [Contact](#) | [State Web Sites](#) | [Site Map](#)  
[Privacy Policy](#) | [Link Policy](#) | [Accessibility Policy](#) | [Security Policy](#)  
Copyright © 2001-2007 State of Michigan

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GLENNA BRYAN,

Plaintiff,

V

Case No. 2:07-CV-11955  
Hon. George Steeh

HYATT CORPORATION, a Delaware  
Corporation d/b/a MANCHESTER GRAND  
HYATT, and JANE DOE (Hyatt Spa Masseuse),  
Jointly and Severally,

Defendants

PHILLIP S. SERAFINI (P45085)  
Attorney for Plaintiff  
38600 Van Dyke Avenue #250  
Sterling Heights, MI 48312  
586-264-3756  
586-264-3783 Fax  
[psslaw@msn.com](mailto:psslaw@msn.com)

RICHARD A. JOSLIN (P47510)  
Attorney for Defendant  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

DEFENDANT'S BRIEF IN REPLY TO  
PLAINTIFF'S RESPONSE TO MOTION TO CHANGE VENUE

*Introduction*

This action arises out of a supposedly negligently performed massage that Plaintiff received while she was a guest at the Manchester Grand Hyatt hotel in San Diego, California. Plaintiff filed this action against the Hyatt Corporation and the masseuse who performed the massage, identifying the masseuse only as Jane Doe, a California resident.<sup>1</sup> The masseuse who performed the massage is in fact April Nakamura, who is indeed a resident of California.<sup>2</sup> Plaintiff has not sought to amend the Complaint to identify Ms. Nakamura nor serve her with process.

Defendant has now filed a motion to either dismiss the case or, in the alternative, transfer the matter to the Southern District of California. Defendant has argued that venue is improper under 28

<sup>1</sup> Complaint at ¶ 4.

<sup>2</sup> Affidavit of Nakamura, Exhibit A.

USC §1391 or, in the alternative, that venue should be transferred to the Southern District for the convenience of the parties and witnesses pursuant to 28 U.S.C. §1404(a).

Plaintiff has now responded to the motion arguing that because the Jane Doe defendant has not been served, she should be dismissed pursuant to FRCP 4(m) and that such a dismissal would "cure" the improper venue issue. Plaintiff also argues that transfer is not required under 28 U.S.C. §1404(a). Both arguments will be addressed serially.

**A. Jane Doe, the now identified April Nakamura, has not been dismissed and as such venue remains improper because venue is determined at the time the action is filed. Furthermore her dismissal will not "cure" the venue problem as she is indispensable to the action.**

Plaintiff argues that because Jane Doe has not been served, she must be dismissed pursuant to FRCP 4(m). However, FRCP 4(m) does not require this court to dismiss the Jane Doe defendant. Rather, the clear language of the rule directs the court to either dismiss the un-served defendant or to order service within a certain period of time. Now that Jane Doe has been identified, Plaintiff would be free to serve her with process assuming that Plaintiff and this Court could obtain jurisdiction over her. Thus, FRCP 4(m) does not require that the residence of Jane Doe be disregarded for purposes of determining the proper venue for this action.

Furthermore, the Plaintiff's argument begs the question as the Jane Doe defendant is still a party defendant and obviously was a defendant at the time the action was filed. The residence of the defendants at the time of the filing of the complaint is dispositive in determining venue.

"[V]enue . . . is to be determined as of the time of the filing of the actions . . ." *Technograph Printed Circuits, Ltd. V Packard Bell Electronics Corp.*, 290 F. Supp. 308, 326 (U.S.D.C. C.D. Calif. 1968), citing, *Hoffman v Blaski*, 363 U.S. 335 1960). Here, Plaintiff's own complaint alleges that Jane Doe is a resident of California. As such, as set forth in Defendants' original brief, venue is not proper pursuant to 28 USC §1391(a)(1). Defendants' motion should be granted on this basis alone.

Plaintiff also appears to argue that venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391(a)(2) by virtue of the fact that her treating physicians are in Michigan and thus

satisfies the requirement that venue is proper in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. However, such an argument has been soundly rejected by the courts.

For example, in *Smith v Fortenbery*, 903 F. Supp. 1018 (E.D. La. 1995), Smith, a resident of Louisiana, was injured in an auto accident in Mississippi. He sued for damages arising out of his injuries in Louisiana. In response to the defendant's motion for change of venue, Smith argued that venue was proper in Louisiana under §1391(a)(2) because he underwent extensive medical care and treatment in Louisiana. *Id.* at 1019.

The court rejected that argument. In doing so, the court looked to the language of the statute which clearly stated that venue was proper in the district in which a substantial part of the "events or omissions giving rise to the claim" occurred. *Id.* at 1020, (emphasis in original). Because it was the accident that gave rise to the claim, not Smith's treatment, the location of his subsequent medical care was irrelevant to the discussion of venue under §1391(a)(2). *Id.* at 1020-21.

As such, as set forth in Defendant's original brief, venue is not proper in Michigan under §1391(a)(2) and as such, Plaintiff's action should be dismissed or transferred.

**B. Venue should be transferred to the Southern District for the convenience of the parties and witnesses pursuant to 28 U.S.C. §1404(a) as the factors such as witness convenience, choice of law and this Honorable Court's subpoena power all weigh heavily in favor of transfer.**

As both Plaintiff and Defendant have explained, in determining whether or not transfer is appropriate pursuant to §1404(a), the court must look at a number of factors, some of which should be given more weight than others. One of the most important factors and indeed, often cited as the most important factor, is the convenience of the witnesses. *Brandon Apparel Group v Quitman Mfg. Co.*, 42 F. Supp. 2d. 821, 834 (N.D. Ill. 1999). In assessing this factor, the court should not look to the number of witnesses, but rather the nature of their expected testimony. *Id.*



In this case, the witness most central to the case is April Nakamura. She is the masseuse who performed the massage and whose testimony about her actions will inform the testimony of all other witnesses.<sup>3</sup>

Also important in assessing this factor is whether or not the witness would be subject to compulsory process. *Reed v Fine Oil and Chemical Co.*, 995 F. Supp. 705, 714 (E.D. Tex. 1998). Here, given Ms. Nakamura's status as a California resident and the fact that at the time of this incident she was an independent contractor, there is no question that this Honorable Court does not have jurisdiction over her and thus could not compel her attendance at deposition or trial. Furthermore, given her independent contractor status, the possibility that proofs developed during discovery would require a third party action against the company that provided Ms. Nakamura to the Hyatt would also factor in favor of transfer to California. *See, Posven v Libert Mut. Ins. Co.*, 303 F. Supp. 2d 391, 406 (S.D. N.Y. 2004).

The circumstances that give rise to this action are similar to those in *Campbell v Hilton Hotels Corp.*, 611 F. Supp. 155 (E.D. Mich. 1985). Campbell was a Michigan resident who was injured while staying at a Hilton Hotel in Florida. Hilton was a Delaware corporation with its principal place of business in California. After Campbell filed suit in Michigan, Hilton sought to transfer the action to the U.S. District Court in the Southern Division of Florida pursuant to §1404(a).

The U.S. District Court for the Eastern District of Michigan granted the motion. *Id.* at 157. In doing so, the court noted that Hilton was not incorporated in Michigan<sup>4</sup>, the incident occurred in Florida, all of Hilton's records regarding the incident were in Florida and the defense witnesses were in Florida. As such, the court held transfer appropriate. *Id.*

<sup>3</sup> For example, it is anticipated that expert witnesses and/or subsequent treaters would testify as to whether or not the techniques used could cause the damage complained of by plaintiff.

<sup>4</sup> It should be noted that the opinion references that Hilton was incorporated in Florida. This is clearly a typographical error as the facts and caption clearly set forth Hilton's state of incorporation as Delaware.

Likewise, in *Kepler v ITT Sheraton Corp.*, 860 F. Supp. 393, (E.D. Mich. 1994), Kepler was injured in an accident while a guest at the Sheraton Plaza Hotel in Florida. He sued Sheraton, a Delaware corporation with its principal place of business outside of Michigan. Sheraton sought to transfer the action to the U.S. District Court in the Southern Division of Florida pursuant to §1404(a).

Citing, *Campbell, supra*, the trial court granted the motion. *Kepler, supra at 399*. In doing so, the court noted that the incident occurred in Florida, Florida law would be applicable, most of the fact witnesses to the incident were in Florida and the records regarding the accident were in Florida. The court rejected the argument of Kepler that he and his treating physicians were in Michigan, noting that while a plaintiff's choice of forum should be granted some deference, courts will not "blindly prefer the plaintiff's choice of forum over a more convenient location." *Id.*, (citation omitted).

As we have seen, the factors here and precedent clearly weigh in favor of transfer to California. In the event that this Honorable Court finds that venue is proper, then Defendant's motion pursuant to §1404(a) should be granted.

Wherefore, Defendant Hyatt Corporation moves this Court to grant its motion and either dismiss Plaintiff's complaint or transfer this action to the Southern District of California.

COLLINS, EINHORN, FARRELL & ULANOFF, P.C.

BY: /s/Richard A. Joslin, Jr.  
RICHARD A. JOSLIN (P47510)  
Attorney for Defendants  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

Dated: December 28, 2007

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GLENNA BRYAN,

Plaintiff,

V

Case No. 2:07-CV-11955  
Hon. George Steeh

HYATT CORPORATION, a Delaware  
Corporation d/b/a MANCHESTER GRAND  
HYATT, and JANE DOE (Hyatt Spa Masseuse),  
Jointly and Severally,

Defendants

PHILLIP S. SERAFINI (P45085)  
Attorney for Plaintiff  
38600 Van Dyke Avenue #250  
Sterling Heights, MI 48312  
586-264-3756  
586-264-3783 Fax  
[psslaw@msn.com](mailto:psslaw@msn.com)

RENEE BIRNBAUM (P50092)  
GARAN LUCOW MILLER, P.C.  
101 North Main Street, Ste. 460  
Ann Arbor, Michigan 48104-5507  
(734) 930-5600

**AFFIDAVIT OF APRIL NAKAMURA**

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF )

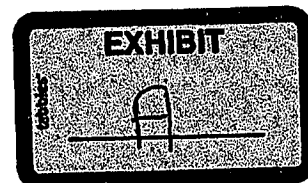
APRIL NAKAMURA, being first duly sworn, deposes and says:

1. On May 9, 2006 I provided a massage to Glenna Bryan.
2. On May 9, 2006 I was not an employee of the Hyatt Corporation
3. Since May 9, 2006 I have been a resident of California.

*April Nakamura*  
APRIL NAKAMURA

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_  
County,  
My commission expires: \_\_\_\_\_



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GLENNA BRYAN,

Plaintiff,

V

Case No. 2:07-CV-11955

Hon. George Steeh

HYATT CORPORATION, a Delaware  
Corporation d/b/a MANCHESTER GRAND  
HYATT, and JANE DOE (Hyatt Spa Masseur),  
Jointly and Severally,

Defendants

PHILLIP S. SERAFINI (P45085)  
Attorney for Plaintiff  
38600 Van Dyke Avenue #250  
Sterling Heights, MI 48312  
586-264-3756  
586-264-3783 Fax  
[psslaw@msn.com](mailto:psslaw@msn.com)

RICHARD A. JOSLIN (P47510)  
Attorney for Defendant  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2007, my secretary, Michelle Best, electronically filed Defendant Hyatt Corporation Brief in Reply to Plaintiff's Response to Motion to Transfer Venue with the Clerk of the Court using the ECF system.

/S/ RICHARD A. JOSLIN, JR.

RICHARD A. JOSLIN, JR. (P55258)  
Attys for Defendant Hyatt Corp.  
4000 Town Center, Suite 909  
Southfield, MI 48075  
(248) 355-4141  
[richard.joslin@ceflawyers.com](mailto:richard.joslin@ceflawyers.com)

LAW OFFICES COLLINS, EINHORN, FARRELL & ULANOFF, P.C. 4000 TOWN CENTER STE 909, SOUTHFIELD, MI 48075 (248) 355-4141

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GLENNA BRYAN,

Plaintiff,

V

Case No. 2:07-CV-11955

Hon. George Steeh

HYATT CORPORATION, a Delaware  
Corporation d/b/a MANCHESTER GRAND  
HYATT, and JANE DOE (Hyatt Spa Masseuse),  
Jointly and Severally,

Defendants

PHILLIP S. SERAFINI (P45085)

Attorney for Plaintiff

38600 Van Dyke Avenue #250

Sterling Heights, MI 48312

586-264-3756

586-264-3783 Fax

psslaw@msn.com

RENEE BIRNBAUM (P50092)

GARAN LUCOW MILLER, P.C.

101 North Main Street, Ste. 460

Ann Arbor, Michigan 48104-5507

(734) 930-5600

AFFIDAVIT OF APRIL NAKAMURA

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF )

APRIL NAKAMURA, being first duly sworn, deposes and says:

1. On May 9, 2006 I provided a massage to Glenna Bryan.
2. On May 9, 2006 I was not an employee of the Hyatt Corporation
3. Since May 9, 2006 I have been a resident of California.

April Nakamura  
APRIL NAKAMURA

Subscribed and sworn to before me

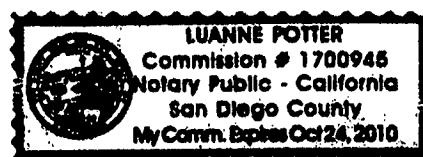
This 3<sup>rd</sup> day of JANUARY, 2007 2008

Luanne Potter

NOTARY PUBLIC

SAN DIEGO County,

My commission expires: OCTOBER 24, 2010



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GLENNA BRYAN,

Plaintiff,

vs.

Case No. 07-CV-11955  
HON. GEORGE CARAM STEEH

HYATT CORPORATION,  
a Delaware corporation d/b/a  
MANCHESTER GRAND HYATT, and  
JANE DOE (Hyatt Spa Masseur),

Defendants.

---

ORDER GRANTING DEFENDANT HYATT CORPORATION'S MOTION TO  
TRANSFER VENUE (#18)

Defendant Hyatt Corporation moves to dismiss or transfer venue to the Southern District of California due to improper venue. A hearing on the motion was scheduled for January 23, 2008. The parties thereafter agreed that the motion be decided on the briefs. The court finds that the facts and legal arguments presented in the parties' briefs are sufficient to adjudicate the motion. Pursuant to E.D. Mich. Local R. 7.1(e)(2), it is ORDERED that the motion be resolved without oral argument.

Plaintiff Glenna Bryan filed a First Amended Complaint on May 16, 2007 alleging she was injured on May 9, 2006 as the result of a deep tissue massage she received while staying at Hyatt's Manchester Grand Hyatt in San Diego, California. Bryan alleges the "Jane Doe" masseuse performed the massage in the course and scope of her employment with Hyatt. Count I alleges negligence against Jane Doe. Count II alleges vicarious liability against Hyatt as the actual or ostensible employer of Doe. Bryan invokes federal diversity jurisdiction alleging she is a Michigan resident, Jane Doe is a California resident, Hyatt is

incorporated under Delaware law with its principal place of business in Illinois, and her damages exceed \$75,000.00. See 28 U.S.C. § 1332.

Hyatt moves to dismiss arguing that venue is improper in the Eastern District of Michigan under 28 U.S.C. § 1391(a)(1-3) because not all defendants reside in Michigan, a substantial part of the events or omissions giving rise to Bryan's claims did not arise within this district, and this action could have been brought in the Southern District of California where the alleged negligent acts and omissions occurred. Hyatt asserts that, in lieu of dismissal, the court should transfer venue to the Southern District of California pursuant to 28 U.S.C. § 1406(a) for improper venue. In the alternative, Hyatt asks the court to transfer venue to the Southern District of California pursuant to 28 U.S.C. § 1404(a) in the interests of justice, and for the convenience of the parties and witnesses.

Bryan responds that she has been unable to identify and serve Jane Doe, who must now be dismissed from this lawsuit under Federal Rule of Civil Procedure 4(m) because the summons has expired. Bryan continues that, with Hyatt being the only remaining defendant, venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391(a)(1) where all defendants reside. Bryan maintains that Hyatt is deemed to reside in Michigan for venue purposes under 28 U.S.C. § 1391(c) because Hyatt conducts continuous and systematic business in Michigan, and is therefore subject to personal jurisdiction in Michigan. Bryan argues that venue is also proper in Michigan under § 1391(a)(2) because a substantial part of the events or activities giving rise to her claims occurred in Michigan when she received medical care and treatment in Michigan. Bryan asserts that the convenience of the parties and witnesses does not weigh in favor of transferring this matter to the Southern District of California considering inter alia that a large corporation such as Hyatt would not be inconvenienced litigating in Michigan, whereas Bryan will be significantly inconvenienced as a Michigan resident if she is required to litigate in California where her

counsel is not a member of the bar.

Hyatt replies by proffering the affidavit of the previously unidentified Jane Doe, April Nakamura, who attests that she was the masseuse who performed the May 9, 2006 massage on Bryan, that she is not a Hyatt employee, and that she has been a resident of California since May 9, 2006. Hyatt contends that Nakamura is an indispensable party-defendant whose California residency was established at the time of the filing of the First Amended Complaint, making Michigan a venue in which not all defendants reside under § 1391(a)(1). Hyatt continues venue is also improper in the Eastern District of Michigan under § 1391(a)(2) as a judicial district where a substantial part of the events or omissions giving rise to this lawsuit occurred because the medical treatment Bryan received in Michigan did not "give rise" to her claims of negligence. Hyatt maintains in the alternative that transferring venue to California under 28 U.S.C. § 1404(a) is warranted for the convenience of the parties and witnesses considering inter alia the convenience of California fact witnesses (as opposed to Michigan medical treaters), the likely application of California law, and this court's limited subpoena power in compelling the attendance of California witnesses.

### **I. Proper Venue in Diversity Actions**

Whether to dismiss or transfer an action for improper venue is within a district court's discretion. First of Michigan Corp. v. Bramlet, 141 F.3d 260, 262 (6th Cir. 1998). 28 U.S.C. § 1391(a) provides:

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.



The court agrees with Hyatt that Bryan's medical treatment in Michigan does not constitute "a substantial part of the events giving rise to the claim" that Hyatt is liable for Bryan's injuries caused by a massage she received in California. See Smith v. Fortenbery, 903 F.Supp. 1018, 1020-21 (E.D. La. 1995) (interpreting plain language of § 1391(a)(2) and reasoning that medical treatment received in Louisiana did not constitute "a substantial part of the events giving rise to the claim" of negligence relative to a Mississippi auto accident). The alleged events or omissions giving rise to Bryan's negligence and vicarious liability claims involve the massage Bryan received at Hyatt's Manchester Grand Hyatt in San Diego, California on May 9, 2006. Venue is not proper under § 1391(a)(2).

It is undisputed that this lawsuit could have been brought in the Southern District of California. Venue in this district is therefore improper under § 1391(a)(3).

In determining residency for purposes of venue under § 1391(a)(1), 28 U.S.C. § 1391(c) provides in pertinent part:

For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.

Hyatt does not dispute that it was subject to personal jurisdiction in Michigan at the time this action was commenced, but instead argues that California resident Nakamura renders venue improper in the Eastern District of Michigan under § 1391(a)(1) because not all defendants reside in this district. Plaintiff's First Amended Complaint names "Jane Doe" as a defendant and alleges she is a California resident. Unlike under the Michigan rules of civil procedure, the Jane Doe masseuse is not deemed dismissed from this federal lawsuit for Bryan's failure to accomplish service.

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specific time; provided that if the plaintiff shows good cause for the failure, the court shall

extend the time for service for an appropriate period. . . .

Fed. R. Civ. P. 4(m).

Although not yet served with process, Jane Doe, now known to be April Nakamura, remains a party-defendant to this lawsuit as she has not been dismissed pursuant to Rule 4(m). Bryan alleges, and Nakamura attests, that defendant "Jane Doe" is a resident of California. It follows that the Eastern District of Michigan is not a district in which both Hyatt and Jane Doe reside for purposes of venue under § 1391(a). Accordingly, Hyatt is entitled to a transfer of venue to the Southern District of California based on improper venue. Bramlet, 141 F.3d at 262.

## **II. Transfer of Venue where Venue is Proper**

In the alternative, and assuming Jane Doe was dismissed from this lawsuit under Rule 4(m), making this judicial district appropriate under § 1391(a) as a district where the remaining defendant Hyatt resides, the court also enjoys discretion to transfer venue under 28 U.S.C. § 1404(a), which provides:

For the convenience of parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The parties do not dispute that this action could have been brought in the Southern District of California as a judicial district in which a substantial part of the events giving rise to Bryan's claims occurred. 28 U.S.C. § 1391(a)(2).

In moving to transfer venue to the Southern District of California, Hyatt bears the burden of proving by a preponderance of the evidence that "fairness and practicality strongly favor the forum to which transfer is sought." Thomas v. Home Depot, U.S.A., Inc., 131 F.Supp.2d 934, 936 (E.D. Mich. 2001) (quoting Rowe v. Chrysler Corp., 520 F.Supp. 15, 16 (E.D. Mich. 1981)). The court should weigh such factors as: (1) the parties' convenience; (2) witnesses' convenience; (3) relative ease of access to the proofs; (4)

availability of process to compel attendance of unwilling witnesses; (5) the cost of obtaining willing witnesses; (6) practical difficulties associated with trying the case quickly and inexpensively; and (7) the interests of justice. Thomas, 131 F.Supp.2d at 936. To establish these factors, "conclusionary allegations of a party will not suffice." Id. at 937.

The parties' convenience favors Bryan as a resident of Michigan without the financial resources of Hyatt, a large corporation. Bryan's witnesses, with the exception of herself, all relate to Bryan's medical treatment and damages, and are not fact witnesses. Masseur Nakamura is a resident of California. Other potential fact witnesses, such as the employees of the Manchester Grand Hyatt in San Diego, will be inconvenienced by traveling to Michigan. In Kepler v. ITT Sheraton Corporation, 860 F.Supp. 393 (E.D. Mich. 1994), Judge Gadola of this District granted the defendant-hotel chain's motion for a change of venue to the Middle District of Florida where the Michigan plaintiff was injured by a shock he received in a hot tub situated on the grounds of an Orlando, Florida hotel. Id. at 395. The Kepler plaintiff argued that venue favored the Eastern District of Michigan as the venue where he and his family resided, and where more than 50 treating medical personnel were located. Id. at 399. The court rejected the argument on finding that all of the fact witnesses, except the plaintiffs, were located in Florida where they were subject to process, and that Florida law was controlling. Id. at 399. Here, all of the fact witnesses with the exception of Bryan are located in California where they are subject to process, and California law is controlling. Witnesses' convenience, relative ease of access to the proofs of liability, availability of process to compel the attendance of unwilling fact witnesses, and the California District Court's familiarity with California law strongly favor a transfer to the Southern District of California. Id. at 399. Trying the case in California would also promote the interests of justice by avoiding expensive piecemeal litigation. The convenience and availability of Bryan's current counsel is of little weight. See Campbell v. Hilton Hotels

Corporation, 611 F.Supp. 155, 157 (E.D. Mich. 1985) (granting change of venue of personal injury action from the Eastern District of Michigan to the Southern District of Florida where the plaintiff was allegedly injured in an accident at a Ft. Lauderdale, Florida hotel).

Hyatt has also shown that fairness and practicality strongly favor a transfer of this action to the Southern District of California under 28 U.S.C. § 1404(a). Accordingly,

Defendant Hyatt Corporation's motion for a change of venue is hereby GRANTED. It is ORDERED that this matter is hereby TRANSFERRED to the United States District Court for the Southern District of California.

SO ORDERED.

Dated: January 24, 2008

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 24, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Deputy Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

Glenna Bryan,

Plaintiff(s),

v.

Case No. 2:07-cv-11955-GCS-VMM  
Hon. George Caram Steeh

Hyatt Corporation, et al.,

Defendant(s).

---

**NOTICE OF TRANSFER TO OTHER DISTRICT**

TO: U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Enclosed are certified copies of the Order of Transfer and the docket sheet. The case record is electronic and can be viewed at our Court's Intranet website via the J-Net.

Please acknowledge receipt of this record by returning a time-stamped copy of this notice to:

Clerk's Office  
U.S. District Court for the Eastern District of Michigan  
231 W. Lafayette Blvd., 5th Floor  
Detroit, MI  
48226  
(313) 234-5005

**Certification**

I hereby certify that this Notice was electronically filed, and the parties and/or counsel of record were served.

DAVID J. WEAVER, CLERK OF COURT

By: s/ D. Tyler  
Deputy Clerk

Dated: January 24, 2008

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

Glenna Bryan,

Plaintiff(s),

v.

Case No. 2:07-cv-11955-GCS-VMM  
Hon. George Caram Steeh

Hyatt Corporation, et al.,

Defendant(s).

---

**NOTICE OF TRANSFER TO OTHER DISTRICT**

TO: U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Enclosed are certified copies of the Order of Transfer and the docket sheet. The case record is electronic and can be viewed at our Court's Intranet website via the J-Net.

Please acknowledge receipt of this record by returning a time-stamped copy of this notice to:

Clerk's Office  
U.S. District Court for the Eastern District of Michigan  
231 W. Lafayette Blvd., 5th Floor  
Detroit, MI  
48226  
(313) 234-5005

**Certification**

I hereby certify that this Notice was electronically filed, and the parties and/or counsel of record were served.

DAVID J. WEAVER, CLERK OF COURT

By: s/ D. Tyler  
Deputy Clerk

Dated: January 24, 2008

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

Glenna Bryan

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Oakland  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

**'08 CV 182 IEG BLM**  
**Hyatt Corporation and Jane Doe (Defendant's Massage Therapist)**

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT State of Delaware  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Phillip S Serafini; Serafini, Michalowski, Derkacz & Assoc, PC  
38600 Van Dyke Ave, Suite 250  
Sterling Heights, MI  
(586)264-3756

## ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |  |   |                            |                                       |
|--|---|----------------------------|---------------------------------------|
| PT   | DEF   | PT                         | DEF                                   |
| <input type="checkbox"/> 1 Citizen of This State                   | <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| <input type="checkbox"/> 2 Citizen of Another State                | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State        | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 1332

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input checked="" type="checkbox"/> 360 Other Personal Injury		<b>LABOR</b>	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions			

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Over \$75,000

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

1/29/08

SIGNATURE OF ATTORNEY OF RECORD

[Signature]